

**Montgomery County Commissioners Meeting**

**December 9, 2003 ~ 6:00 p.m.**

**Chairman – William D. Maness “Billy”**

**Vice-Chairman – Dolon W. Corbett**

**Commissioner - Sally M. Morris**

**Commissioner – R.C. Bostic**

**Commissioner – George H. Knight, Jr.**

**County Manager – Lee Matthews**

**Clerk – Laura B. Morton**

**County Attorney – Russell J. Hollers**

The Montgomery County Board of Commissioner’s met in regular session on Tuesday, December 9, 2003 at 6:00 p.m. in the Montgomery County Commissioners’ Room. All board members were present. *Chairman Maness called the meeting to order and the following was heard:*

Chaplain Bruce Hill from Southern Correctional Facility gave the invocation.

**Formation of the Board**

Chairman Maness turned the meeting over to County Manager Lee Matthews who opened the floor for nominations for Chairman, Vice Chairman, Clerk to the Board, and County Attorney.

In a motion made by Commissioner Corbett, seconded by Commissioner Morris, and so the motion carried unanimously for officers of the board to remain the same: Chairman William D. Maness, Vice Chairman Dolon Corbett, Clerk to the Board Laura B. Morton, and County Attorney Russ Hollers.

**Approval of Minutes**

In a motion made by Commissioner Corbett seconded by Commissioner Knight, and so the motion carried unanimously to approve the minutes for the last meeting.

**Presentation of Retirement Plaque for Karen Garner**

Mrs. Garner was unable to attend the meeting and Chairman Maness asked for it to be put on the next meeting’s agenda.

**Public Forum**

No one spoke during the public hearing.

**Hazard Mitigation Plan**

Ms. Paula Sloneker of the Piedmont Triad Council of Governments was present. She explained the process. The state passed a law two years ago requiring all counties to adopt a Hazard Mitigation Plan. We have until November 2004 to adopt this plan. The county received grant funds to assist in drafting this plan. There has been a series of meetings with representatives of the towns and emergency agencies throughout 2003. One of the requirements is to hold two public meetings for input. She said this is the second meeting. She presented a summary of the plan to the Board.

**Planning Board Report**

*Mr. Phil Henley presented the following Planning Board report:*

**Variance Request – Donald Bartlett**

Mr. Bartlett’s request is for a variance on his property located at 5128 Woodrun on Tillery in Mt. Gilead, N.C. 27306, Lot #678. This lot is 15,000 square feet and needs 1,000 more square feet in order to build a 2880 square foot home. No one spoke in opposition of this request. The Planning Board recommended approval of this request.

In a motion made by Commissioner Morris, seconded by Commissioner Corbett and so the motion carried unanimously to approve the variance request as presented.

**Hardship Request – Patricia Marshall**

Mr. Henley said this next is for Patricia Marshall requesting a hardship for her property located in Dixie Shores, lot #208. This request is in order to place a 1969 singlewide mobile home on her property, which is currently zoned R-2. Back in 1998 Mrs. Marshall did come before the Planning Board and requested conditional use permit for the 1969 home, which was zoned R-1 with conditional use. If the conditional use is not activated within six months it is no longer valid. Mrs. Marshall came back this year and asked to go ahead and get power put on the unit, but according to our ordinance, it is not feasible at this time, it is not permitted, it is zoned R-2. The criteria for a mobile home requires it be newer than a 1976. He said I did have one call pertaining to this matter from a property owner. He was not objecting to her having a home there, his concern was that she comply by the ordinance as it is written now. The Planning Board heard both the pros and cons of this case, and really did not come up with a recommendation to the County Commissioners. What they felt was a matter of legality involved in it and they recommended the County Commissioners contact the County Attorney to look into it. The Planning Board said they would go along with whatever the County Commissioners determined to do so, legally.

Chairman Maness asked what Attorney Hollers said. Mr. Matthews said I talked with the County Attorney and he felt that the Commissioners do not have much choice but to deny the request for a number of reasons. One, it didn't meet the hardship requirements, he felt some other things could be done with the property, the six month time limit expired on the original conditional use permit, he was concerned about the statement that a conditional use permit will not lower property values. Mr. Matthews said the most important one was that the 1969 trailer would violate the county ordinance which states that we can't allow anything older than a 1976.

Chairman Maness said would anyone like to speak on this.

Commissioner Knight asked if he can say something before we go any further. He said I knew things like this would happen. You might not remember, a few months ago, I mentioned the fact that what we do for one, we got to do for all. Now, we just approved a variance request. Now our ordinance says they've got to have a certain amount of feet and the variance can only be a certain percentage. Now, our ordinance says that, and we have the authority to approve that request; although our ordinance says something else. Now, if we did everything according to our ordinance, Phil would not have to come up here to get our approval or disapproval, right? So what we have just approved is not in accordance with our ordinance, am I right? Am I right on that? Our ordinance says one thing and we approved for something else to happen, so we are still not abiding by our ordinance because we have the authority to approve that.

Chairman Maness asked Mr. Henley if there was a section on sub-sized lots? Mr. Henley said yes. Commissioner Morris said there is something in our ordinance about building on sub-sized lots. Commissioner Knight said I know that there is something in our ordinance that says we can approve a sub-sized lot. We can also approve rezoning. I mean we can approve all of these things. And now all of a sudden we seem to have a problem here and we got to check with the attorney. We haven't been checking with the attorney on a lot of things that we have approved or disapproved. And all of a sudden we got to check with the attorney and the attorney is telling us we have to go according to our ordinance. Now, we haven't been going according to our ordinance in a lot of cases. This is something I warned the board against before, because I didn't want to go along with something because our ordinance said that it wouldn't be that way. Now all of a sudden we have got to stick to the ordinance. We've got to treat our citizens the same. If I understand correctly, it bothers me to know, that we are so messed up, I call it just like that, we gave permission to put that trailer there, did we not? Mr. Henley said in 1998, yes sir. Mr. Knight said we also said that she had five years to get the septic tank. Now you can not get your power turned on until you get your septic tank dug, right? So how do we expect for all of this to be done in six months when you got five years? Mr. Henley said if the permit been bought or issued for the home before that six months it would have been validated and would have been good until she got her system in. Commissioner Knight asked what was the five years for? Mr. Henley said for the installation of the septic system. Commissioner Knight said you can't get your power turned on until you get the septic system put in . . . Mr. Matthews said the five years is also a state requirement not a county requirement, the county when we did the conditional use permits are only good for six months. Mr. Knight said I understand that was not specified on the conditional use permit. Mr. Henley said at that time we did not issue zoning permits. Mr. Knight said so what are we working with here? Mr. Henley said we are working with the ordinance now. Mr. Knight said I mean at what point, from what I understand, we had the sewer system put in and the county went out there and inspected it and passed, now what did you go through all of that for if you couldn't use it. Mr. Henley said I have no control over what Environmental Health does, that is a completely different department. Mr. Knight said we are talking about Montgomery County. Mr. Henley said yes sir, but that is a different department. Chairman Maness said he is not over that George . . . Commissioner Bostic said Mr. Chairman we are going to get into a lot of expursion of something and wrong doings and different things. I would like to offer a move that we approve this with a sunset of 24 months that she has a conditional use permit for 24 months and after that she has to change it back to meet the specification of the ordinance, if I could get a second. Commissioner Knight seconded Commissioner Bostic's motion.

Commissioner Corbett said the thing that concerns me on this you know . . . Chairman Maness said we have a motion on the floor by Commissioner Bostic, and a second by Commissioner Knight to give her a sunset of 12 months, Commissioner Bostic said 24 months.

Chairman Maness said my concern would be I am not worried about the hardship case, I am worried about the liability we have on a '69 trailer, that is my concern . . . Patricia I will be with you in just one second . . . Commissioners that is what kind of liability we have. I know there have been a lot of cases that has come up here. He said I know that a case not long ago where Mrs. Parsons wanted just to be able to take a singlewide trailer out and put a singlewide mobile home in and the commissioners wouldn't let her do it. It was in that same area. That was in Sugar Loaf, similar to it, so. Again, I want to work with everybody, and try to make everything, you know it all work out. Again we have been very consistent on the sub-sized lots, we have been very consistent on it. I know the commissioners in the passed have continuously turned down trailers that were older than 1976. That is what I wanted to say.

Commissioner Corbett said we do have a safety issue here. There has been documentation where these have burned around the country and killed lots of folks. You are aware of this aren't you Phil? It is a dangerous situation.

Commissioner Knight asked what is the danger here? Commissioner Corbett said the wiring. Chairman Maness said the copper wiring. Commissioner Knight said do we have any trailers out there now that are '76 or under? Commissioner Corbett said I am sure we do. Mr. Knight said don't they have the same wiring? Mr. Corbett said

they were put there before the ordinance. Mr. Knight said this trailer was put in there before the ordinance also, so where is the danger we are talking about? Chairman Maness said the liability is with that if we approve it, we stand liable. We can't help the other ones, we got a case on this one.

Commissioner Morris said this is a state law isn't it Phil? Mr. Henley said no this is a county ordinance . . . Mrs. Morris said the years. Mr. Henley said 1965 to 1976 were the models with this wiring.

Mr. Henley said if you are insinuating that I show partiality to certain groups of people, I don't feel like I do . . . If the board feels that way, I took this job to help the county out. The board can get someone else . . . Chairman Maness said I think you are doing a fine job. Commissioner Morris agreed. Mr. Henley said I am not partial to anyone.

Commissioner Knight said if you are insinuating that I am saying that you are showing partiality. . . Mr. Henley said no sir . . . Mr. Knight said what I am trying to say is we are trying to find every reason not to do something, why don't we look back and see what we did wrong. Somebody should have told that person when they got the permit they only had six months . . . Don't just think that somebody knows. You let them know and put it in writing that you only have six months to have this done. If you don't have this done within six months you don't get it done. Now was that done? Mr. Henley said no sir . . . Mr. Knight said well then we made a mistake and we are trying to do right now is try to find reasons to not do something. I don't think we should be doing that. Mr. Henley said that is fine, if you want to approve it, I am just presenting the case.

Ms. Patricia Marshall appeared before the board and handed out folders with the history of her case. She said she has already been over it but she would go over the information quickly. She said if she had known about the six month limit, they would have done the septic system sooner. It said five years for the system, and you can't get your lights on without the sewer system.

Mrs. Marshall also supplied new information. She said I came before the commissioners and I have where Phil states that he only goes by the rules and zoning ordinance. She said Phil doesn't go by rules. I have a paper here where Phil just doesn't go by the rules; he makes up his own, he makes them up as he goes along. I have papers here to verify that. Mrs. Marshall said Dan McRae states that he had a concern about the age of the mobile home that the state recommends to the county that they do not allow nothing under the age of 1976 for reasons of faulty wiring. She said I called Phil this morning, and Mr. Matthews I talked with you too, so you very well know what's going on other than these board members. I told you and Phil and Billy Maness suspicions. To make a long story short, it ain't, I am not here about the age of the mobile home, because this was done in 1998 and there was no zoning ordinance. She said as you notice on the middle of the page 2 of 2 that Phil Henley informed the board that there was no zoning permits in 1998 they started in 1999. Then when I asked in the Planning Board members about grandfathering, the Chairman didn't know what grandfathering was. She said I have sense enough to know what grandfathering means. She said there was a ruling in 1998 and it was 1999 when you set the zoning ordinance, that is grandfathering.

This morning I called Phil, and I questioned him about the newspaper. She read "Further complicating the matter, the county now follows state guidelines, that recommends against the allowing mobile homes built prior to 1976." She said I called Phil Henley this morning at five after nine and asked him to give me the state's phone number and address that made the approval and he finally told me that the state didn't make that rule, that it was in the zoning ordinance. She said I asked him who makes the zoning ordinances? He said the County Commissioners. She said so why am I standing still spinning?

Chairman Maness said we have a process we go through. Mrs. Marshall said okay.

Mrs. Marshall said on page 4 this is \$6,764 that my son has spent in this mobile home getting the perk test from the County and the conditional use permit.

She said now on page 5, since you are worried about the faulty wiring, I called an electrician out there. Kime's Electric, who I knew nothing about, who was recommended by Ted Ballard, the man who did the septic tank, told me about a man who I could get to come and wire it up. I called Kime's Electric last week and he said he checked the panel and the breaker style is 100 amp and ground and neutrals have been separated. He said the mobile home seems to be in good shape. I would replace bathroom receptacles with GFCI receptacles and also kitchen receptacles. He said I would also replace bedroom circuits.

She said on page 6, as you were worried about the county being responsible for something happening to that older model mobile home, I got a notarized statement from Kaye Norris that says I will not hold Montgomery County responsible or liable for nothing that would occur to that mobile home. I am the owner of the 1969 mobile home and I will take full responsibility myself. And I have a notarized statement. I had the electrician come out and I do have pictures of the mobile home. *(which she supplied to the board)*.

The board viewed the pictures.

Chairman Maness asked how long has it been sitting there? Mrs. Marshall said four years, but we have been in and out of it, we have been staying in and out of it and it has been sitting there since 1998. She said I say we have been staying in it, don't you camp out? Chairman Maness said I try not to. She said it is in very good shape I go every other day and do something to it. Mrs. Marshall said I also wanted to mention before I go, I have one

person opposing me back there, in 1998 I had 6 or 7 of them. In 2003 I just have one and I do not know why he is here because his land does not adjoin mine. As you all can see his lot is 229 it is waterfront. You can't see anything but the roof from mine. He has junk on 229. Mrs. Marshall said me and him had personal words down at the pier, he threatened to put a rope around my neck and I told him if he did I would take him with me. Chairman Maness said, Patricia, let's not get personal.

Motion on the floor by Commissioner Bostic, seconded by Commissioner Knight, and the motion failed 2-3. (Voting for Commissioner Bostic and Commissioner Knight; Voting against Commissioner Corbett, Chairman Maness, and Commissioner Morris.)

Chairman Maness asked if anyone else would like to speak on this. Commissioner Bostic said it is a new issue now.

Mrs. Marshall said what do I do? Chairman Maness said the commissioner have not allowed you to have that 1969 trailer and have it hooked up.

Commissioner Knight said what we just voted on was the motion the Commissioner Bostic made, we haven't made any decision as to whether she can get her lights hooked up or not. Chairman Maness said okay. He asked if anyone else wanted to speak, no one did and he asked what the pleasure of the board is.

Commissioner Corbett made a motion that due to the recommendation of the county attorney that the board not approve this request. Commissioner Morris seconded the motion on the county attorney's recommendation.

Chairman Maness asked for further discussion.

Commissioner Knight said I have further discussion and I hope this goes in the minutes too. If we are going to need the attorney's okay on this, I think when Phil brings anything else to us, he should have the attorney's okay.

Chairman Maness asked for further discussion.

The motion carried 3-2 not to approve this hardship case.

Mrs. Marshall asked if she could say something else? Chairman Maness said you can have one more minute. She said there are several things that are going on up at Badin Lake that Mr. Matthews is aware of and Phil already knows. What you all just did to me was you denied putting lights on my 1969, but Phil has just okayed a 1972 singlewide that a house has been put around it and they just broke out the back part of it three or four weeks ago. When I questioned Phil about it he said he didn't know about it because it is on the record that he did know and he has taken a file out of the box down there to keep me from getting, but I already have copies of everything anyway. I want you to look at this. How can you approve if you said you are going by the zoning ordinance? How can you approve a 1972 singlewide they made a whole house out of and I was down there in the house four weeks ago when they were busting out the back portions of the house. So the 12x60 singlewide Phil okayed that they got his signature on it, he okayed that. He didn't okay that, but he okayed them to put a porch/deck, they didn't do either one they caged it in and made a big house out of it. It is a 28x60 now. Phil took the stuff out of the folder, took the whole folder out of the file after I got to questioning him about it. I went four weeks in a row and I am going back down there to see what they have changed in the folder. Phil still has the folder. I questioned him the other day, why would you still be holding the folder, if it is supposed to be for the public to come in and see. Not only did he do that, he also approved of another situation, so if all of this is going on and you say you are going by the zoning ordinances, how can you say you are going by the zoning ordinances and the same thing that is happened right here? Harvey Haddock lot #66, he just built a garage and Phil Henley signed it and stated the house is associated with the garage, how can you associate the house with the garage when you have two streets back there? How can it be associated with a garage? You have two back lots before you get to where the garage is. He just sold that lot and house on 66 for \$275,000. So now Phil has given them okay to put power on the garage two years ago. What is the difference? You are making up all kinds of rules and regulations. You let them do what they want to do up there, but we can't cut power on and you allow a 1972 be turned into a house?

Mrs. Marshall said I will tell you, you can look for a lawsuit. I will remember you all come voting time.

### **Rezoning Request – AAT Communications**

AAT Communications' request is to rezone a section of the property located on Cagle Street, between Hwy 1349 and US 220 Alt. The property owners are John and Rebecca Lynch. This request is in order to construct a 280' guyed telecommunication tower required by Alltel Communications to expand and approve its wireless services in the Montgomery County area. No one spoke in opposition to this request. The Planning Board recommended approval of this request.

In a motion made by Commissioner Bostic, seconded by Commissioner Corbett and so the motion carried unanimously to approve the rezoning request for AAT Communications.

### **Mr. Henley Response**

Mr. Henley said if the board would like him to he will respond to any of those accusations.

Commissioner Knight said one thing I want to do and I want to do it as soon as possible is I remember reading in our ordinance that we don't run power to garages. If I had a lot up there and I wanted to box it in, would you let me run power to it? Mr. Henley said if it is adjacent to that owners property yes. I don't know of anything that says you can't put power on a garage. Mr. Knight said we just talked about something about running power and putting water and commodes, etc. Mr. Henley said that is in Twin Harbor. Mr. Knight said the rest of the county, I could put sewer, commode, power and live in it? Mr. Henley said no you can not live in it. Mr. Knight said what would keep me from living in it? Mr. Henley said this is a garage like putting your car or boat in or this type stuff. Mr. Knight said you can box it in, the whole works. Mr. Henley said yes sir.

Commissioner Bostic said not that I believe that Phil has done anything wrong, but I think that we owe the citizens of this county that would cast dispersion of wrong doing. I would like for the county manager to look into the allegations that were made and bring a report back to the board just to make sure there was no wrong doing. Let's put it on the table. If there is something wrong we want to know about it if there is something right we want to know.

Chairman Maness and Commissioner Corbett agreed.

Commissioner Knight said, one thing, too Mr. Chairman . . . Chairman Maness said one thing first is he directed Phil Henley to get with Mr. Matthews and work out and asked Mr. Matthews to have a report on that at our work session.

Commissioner Knight said what I was going to say is that I don't know what is being done now, but in the future when a person comes in and gets a permit and pays their \$150, they should know and it should be in writing the extent of that permit. They should know they only have six months to get everything completed. We extended a conditional use permit here a few months ago, we extended the time, because the person didn't get it done in the time they were suppose to and we extended the time, so he could finish what he needed to do. Do you remember that? Mr. Henley said yes sir. Mr. Knight said if we extended it for one person, shouldn't we extend it for another? Mr. Henley said that is up to the board. Mr. Knight said what I am trying to say is that we are going to have to be fair to our citizens. We are going to have to be awful careful if we turn one down that we turn the next down as well. I don't care if they live next door to you or what. We have to treat all of our citizens the same. Not just because you can get three votes, that doesn't make it right. We need to make sure that we treat all of our citizens the same and when we make a mistake we need to admit we made a mistake and we need to correct the mistake. Commissioner Knight said if I come up here tomorrow and get a permit I would like to know the extent of the permit in writing and we failed to have done that.

Chairman Maness said Phil, I would appreciate it if you would get with Mr. Matthews on that, and I appreciate what you do.

### **Approval of Budget Amendments**

#### **Montgomery County Schools**

Dr. Max Suggs was present to explain the budget amendment request for Montgomery County Schools. He said this is not a request for more funds. The request is to move \$166,198.00 from capital outlay to local current expense. He said this amount represents our technology purchases.

In a motion made by Commissioner Knight, seconded by Commissioner Morris, and so the motion carried unanimously to approve the budget amendment request for Montgomery County Schools.

Dr. Suggs said at the next meeting we will be bringing information about the compass learning which has been very successful. It wasn't approved early enough for this meeting.

#### **Parents are Teachers Too**

In a motion made by Commissioner Corbett, seconded by Commissioner Knight, and so the motion carried unanimously to approve the budget amendment for the Parents are Teachers Too Program.

### **Items Carried Forward from the Work Session**

#### **Economic Incentive Agreement/Contract Transfer to Unilin**

Commissioner Morris made a motion to approve the Economic Incentive Agreement/Contract Transfer to Unilin. Commissioner Corbett said he would second the motion under the conditions we discussed in the work session. Chairman Maness asked if there was any discussion? Commissioner Knight said there was some things that were suppose to be done to the agreement, what were those, do you know what they were.

Mrs. Stevens was present and she said yes. She said the jobs would continue that they are committed to and the investment will be equal. This will be all clarified.

Chairman Maness said it will be a new contract. Commissioner Knight said there was something about the period. Mr. Maness along with Mrs. Stevens said three years.

The motion to approve the Economic Incentive Agreement/Contract Transfer to Unilin carried 4-1. (Voting For the motion Commissioner Morris, Commissioner Corbett, Commissioner Knight, and Chairman Maness; Voting against, Commissioner Bostic).

**Fire Department Water Bills**

In a motion made by Commissioner Corbett, seconded by Commissioner Bostic, and so the motion carried unanimously to waive the fees for the Pekin, Lake Tillery, and Uwharrie Fire Department.

**Important Dates to Remember**

December 13, 2003 is the Star Christmas Parade.

There being no further business the meeting was adjourned.

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William D. Maness, Chairman

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Laura B. Morton, Clerk to the Board